

IN THE CIRCUIT COURT OF TENNESSEE FOR THE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS, SHELBY COUNTY

FILED
OCT 02 2006
CLERK
BY BEA
D.C.

136699)
Anita Brice, as Next Friend of Martha)
Hart, an incapacitated person)
700)
Plaintiff,)
v.) CAUSE NO. CT-005134-06
116680) Jury Demanded
Kindred Healthcare Operating, Inc.;)
Kindred Healthcare, Inc.; 116681)
Kindred Nursing Centers East, LLC; 114050)
Kindred Hospitals Limited Partnership; 133936)
Kindred Nursing Centers Limited Partnership) 133905
d/b/a Primacy Healthcare and)
Rehabilitation Center; and St. Peter)
Villa, Inc. d/b/a St. Peter Villa Nursing Home;) 136429
Defendants.)

COMPLAINT

COMES NOW the Plaintiff, Anita Brice, as Next Friend of Martha Hart, an incapacitated person, and complains of Kindred Healthcare Operating, Inc.; Kindred Healthcare, Inc.; Kindred Nursing Center East, LLC; Kindred Hospitals Limited Partnership; Kindred Nursing Centers Limited Partnership d/b/a Primacy Healthcare and Rehabilitation Center; and St. Peter Villa, Inc. d/b/a St. Peter Villa Nursing Home, Defendants, and for this cause of action would show as follows:

PARTIES

1. Martha Hart was a resident of St. Peter Villa Nursing Home, a facility owned, operated and/or managed by Defendant St. Peter Villa, Inc. d/b/a St. Peter Villa Nursing Home, located at 141 North McLean, Memphis, TN 38104 from April 2005 until August 2005.

2. Martha Hart was a resident of Primacy Healthcare and Rehabilitation Center, a facility owned, operated and/or managed by Defendants Kindred Healthcare Operating, Inc., Kindred Healthcare, Inc., Kindred Nursing Centers East, LLC, and Kindred Hospitals Limited Partnership d/b/a Primacy Healthcare and Rehabilitation Center located at 6025 Primacy Parkway, Memphis, TN 38119 from October 2005 until November 2005.

3. At all times during her residency, Martha Hart was incapable of taking care of herself and incapable of attending to any business; thus, she was of unsound mind as that term is used in *Tenn. Code Ann.* § 28-1-106 (1999).

4. *Tenn. Code Ann.* § 28-1-106 provides for a tolling of the limitations period, and specifically states as follows:

If a person entitled to commence an action is, at the time the cause of action accrued, either within the age of eighteen (18) years of age, **or of unsound mind**, such person, **or her representatives and privies**, as the case may be, may commence the action, after the removal of such disability, within the time of limitation for the particular cause of action, unless it exceed three (3) years, and in that case within three (3) years from the removal of such disability. (emphasis added)

5. The term "of unsound mind" as used in *Tenn. Code Ann.* § 28-1-106 has been construed to apply to individuals who are incapable of attending to any business or incapable of taking care of care of themselves. *See Doe v. Coffee County Bd. of Educ.*, 852 S.W.2d 899, 905 (Tenn. Ct. App. 1992); *see also Smith v. Grumann-Olsen Corp.*, 913 F.Supp. 1077 (E.D. Tenn. 1995).

6. Because Martha Hart was incapable of attending to any business or caring for herself, the foregoing savings statute is applicable and the limitations period for Ms. Hart's claims against the Defendants are tolled. Accordingly, all of Martha Hart's claims are timely filed.

7. Defendant St. Peter Villa, Inc. is a domestic corporation that at relevant times material to this lawsuit was engaged in business in Tennessee. The causes of action made the basis of this suit arise out of such business conducted by said Defendant in the ownership, operation, management and/or control of St. Peter Villa Nursing Home. Said Defendant may be served with process by serving Craig T. Hofer, 5825 Shelby Oaks Drive, Memphis, Tennessee 38134.

8. Defendant Kindred Healthcare Operating, Inc. is a foreign corporation that at times material to this lawsuit was engaged in business in Tennessee. The causes of action made the basis of this suit arise out of such business conducted by said Defendant in the ownership, operation, management and/or control of Primacy Healthcare and Rehabilitation Center. Said Defendant may be served with process by serving CT Corporation Systems, 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929.

9. Defendant Kindred Healthcare, Inc. is a foreign corporation that at times material to this lawsuit was engaged in business in Tennessee. The causes of action made the basis of this suit arise out of such business conducted by said Defendant in the ownership, operation, management and/or control of Primacy Healthcare and Rehabilitation Center. Said Defendant may be served with process by serving CT Corporation Systems, Kentucky Home Life Building, Louisville, KY 40202.

10. Defendant Kindred Nursing Centers East, LLC is a foreign limited liability company that at times material to this lawsuit was engaged in business in Tennessee. The causes of action made the basis of this suit arise out of such business conducted by said Defendant in the ownership, operation, management and/or control of Primacy Healthcare and Rehabilitation Center. Defendant Kindred Nursing Centers East, LLC's principal address is 680 South 4th

Avenue, Louisville, Kentucky 40202. Said Defendant may be served with process by serving CT Corporation Systems, 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929.

11. Defendant Kindred Hospitals Limited Partnership is a foreign corporation that at times material to this lawsuit was engaged in business in Tennessee. The causes of action made the basis of this suit arise out of such business conducted by said Defendant in the ownership, operation, management and/or control of Primacy Healthcare and Rehabilitation Center. Said Defendant may be served with process by serving CT Corporation Systems, 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929.

12. Defendant Kindred Nursing Centers Limited Partnership d/b/a Primacy Healthcare and Rehabilitation Center is a foreign corporation that at times material to this lawsuit was engaged in business in Tennessee and at all times material to this action was the “licensee” authorized to operate a nursing facility under the name of Primacy Healthcare and Rehabilitation Center in Shelby County, Tennessee. The causes of action made the basis of this suit arise out of such business conducted by said Defendant in the ownership, operation, management and/or control of Primacy Healthcare and Rehabilitation Center. Defendant Kindred Nursing Centers Limited Partnership’s principal address is 680 South Fourth Avenue, One Vencor Place, Louisville, Kentucky 40202. Said Defendant may be served with process by serving CT Corporation System, 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929.

VENUE

13. The injuries made the basis of this lawsuit were products of the corporate and financial policies designed, formulated, and implemented by Defendants. Venue for this action lies in Shelby County, Tennessee.

DEFINITIONS

14. Whenever the term “Defendants” is utilized within this suit, such term collectively refers to and includes all named Defendants in this lawsuit.

15. Whenever the term “Kindred Defendants” is utilized within this Complaint, such term collectively refers to and includes Kindred Healthcare Operating, Inc., Kindred Healthcare, Inc.; Kindred Nursing Centers East, LLC; Kindred Hospitals Limited Partnership; and Kindred Nursing Centers Limited Partnership d/b/a Primacy Rehabilitation and Nursing Center.

16. Whenever in this suit it is alleged that Defendants did any act or thing or failed to do any act or things, it is meant that the officers, agents, or employees of the designated corporations respectively performed, participated in, or failed to perform such acts or things while in the course and scope of the their employment and/or agency relationship with said Defendants.

FACTS

17. St. Peter Villa, Inc. d/b/a St. Peter Villa Nursing Home (St. Peter Villa) is a skilled nursing facility located at 141 North McLean, Memphis, Tennessee. Martha Hart was a resident at St. Peter from April 2005 to August 2005.

18. Primacy Rehabilitation and Nursing Center (Primacy) is a skilled nursing facility located at 6025 Primacy Parkway, Memphis, Tennessee. Martha Hart was a resident at Primacy from October 2005 until November 2005.

19. At all times mentioned hereto, Martha Hart was of unsound mind and unable to attend to her affairs or care for herself throughout her residencies at St. Peter Villa and Primacy.

20. While in the care of St. Peter Villa, Martha Hart suffered injuries and harm which include, but are not limited to, the following:

- a) Urinary tract infections;

- b) Pressure sores;
- c) Blisters on thighs;
- d) Scratches and skin tears to legs;
- e) Poor hygiene;
- f) Dehydration;
- g) Violation of her dignity and privacy by being required to take cold showers in the presence of male residents;
- h) Violation of her right to choose her own physician;
- i) Pneumonia; and
- j) Weight loss.

21. While in the care of Primacy, Martha Hart suffered injuries and harm which include, but are not limited to, the following:

- a) Pneumonia;
- b) Urinary tract infections;
- c) Falls, resulting in head injury;
- d) Pressure sores;
- e) Poor hygiene;
- f) Malnutrition;
- g) PEG tube placement;
- h) Medication errors;
- i) Dehydration; and
- j) Failure to timely diagnose stroke.

22. The injuries described in this Complaint are a direct and proximate result of the acts or omissions set forth herein, singularly or in combination. As a result of these injuries, Ms. Hart's overall health deteriorated and she required medical attention.

23. Kindred Healthcare, Inc. provides residents with long-term care services, a full range of pharmacy, medical and clinical services and routine services, including daily dietary, social and recreational services.

24. In its Form 10K for the fiscal year ending December 31, 2003, Kindred Healthcare, Inc. stated that it operated 255 nursing centers in 30 states with 32,927 licensed beds. The Health Services Division, which operates the nursing homes, was the third largest network of nursing centers in the United States based on fiscal 2003 revenues of approximately \$1.7 billion.

25. All references in the annual report on Form 10-K to "Kindred," "Our Company," "we," "us," or "our" mean Kindred Healthcare, Inc. and unless the context otherwise requires, its consolidated subsidiaries. (Form 10-K 2002, Form 10K 2003, Form 10-K 2004)

26. The December 31, 2003, Form 10K stated that Kindred Healthcare, Inc.'s Health Services Division was focused on its goal of providing quality care under the cost containment objectives imposed by the government and private payers, and pursued initiatives to:

- a) Hire and retain quality healthcare personnel;
- b) Improve processes to monitor and promote resident care objectives and align financial incentives with quality care; and,
- c) Implementing recommendations of the performance improvement committees established at the division, regional and district levels that analyze data, set quality goals and oversee all quality assurance and quality improvement activities throughout the division, including fulfilling their obligations under the Corporate Integrity Agreement.

27. In the 2003 and 2004 10K, Kindred Healthcare, Inc. also stated its plan to increase awareness of its services by:

- a) Directing a targeted marketing effort at the elderly population;
- b) Offering internet access sites for each facility; and
- c) Working to improve relationships with existing local referral sources, and identify and develop new referral sources.

28. Kindred Healthcare, Inc., claimed revenues of \$1,801,372,000 for the year ending December 31, 2004.

29. Kindred Healthcare, Inc., claimed revenues of \$1,693,110,000 for the year ending December 31, 2003.

30. Kindred Healthcare, Inc., claimed revenues of \$1,658,659,000 for the year ending December 31, 2002.

31. Each of Kindred Healthcare, Inc.'s nursing centers is managed by state licensed administrators who are supported by other professional personnel, including a director of nursing. (Form 10-K 2004, Form 10-K 2003, Form 10-K 2002)

32. Kindred Healthcare, Inc., provides its facilities with centralized information systems, human resources management, federal and state reimbursement expertise, state licensing and certification maintenance as well as legal, finance and accounting, purchasing and facilities' management support. Kindred Healthcare, Inc., claims that the centralization of these services improves operating efficiencies and permits facility staff to focus on the delivery of high quality nursing services. (Form 10-K 2004, Form 10-K 2003, Form 10-K 2002)

33. The Health Services Division of Kindred Healthcare, Inc., which operates the nursing homes, is managed by a divisional president and a chief financial officer. (Form 10-K 2004, Form 10-K 2003, Form 10-K 2002)

34. The nursing center operations are divided into four geographic regions, each of which is headed by an operational senior vice president. These four operational senior vice presidents report to the divisional president. (Form 10-K 2004, Form 10-K 2003, Form 10-K 2002)

35. The clinical issues and quality concerns of the Health Services Division are managed by the division's chief medical officer and senior vice president of clinical operations. (Form 10-K 2004, Form 10-K 2003, Form 10-K 2002)

36. District and/or regional staff in the areas of nursing, dietary and rehabilitation services, federal and state reimbursement, human resource management, maintenance, sales and financial services support the Health Services Division. (Form 10-K 2004, Form 10-K 2003, Form 10-K 2002)

37. According to the Kindred website, www.kindredhealthcare.com, as of June 30, 2005, the Company's Health Services Division operated 248 nursing centers (31,880 licensed beds) in 29 states.

38. According to the Kindred website, www.kindredhealthcare.com, as of June 30, 2005, the consolidated revenues for the second quarter increased 18% to \$1.0 billion from \$886 million for the same period in 2004.

39. According to the Kindred website, www.kindredhealthcare.com, as of June 30, 2005, net income from continuing operations for the second quarter of 2005 totaled \$50.0 million or \$1.08 per diluted share compared to \$25.1 million or \$0.60 per diluted share in the second quarter of 2004.

40. According to the Kindred website, www.kindredhealthcare.com, Paul Diaz, President and Chief Executive Officer of Kindred was quoted as saying, "our consolidated results for the first half of 2005 are well ahead of last year."

41. According to the Kindred website, www.kindredhealthcare.com, Paul Diaz, President and Chief Executive Officer of Kindred was quoted as saying, “our balance sheet remains solid and we expect our operating cash flows to be strong over the second half of 2005 as we work to improve our accounts receivable collections.”

42. According to Kindred’s 401k-plan for 2003 the following terms are defined as follows:

- a) **Board** means the Board of Directors of the Sponsoring Employer, except as otherwise provided;
- b) **Company** means Kindred Healthcare, Inc. and all of the legal entities which are part of the controlled group or affiliated service group with Kindred Healthcare, Inc.;
- c) **Employee** means any person whom the Employer classifies as a common law employee of the Employer and who is paid through the normal payroll system of the Employer; and,
- d) **Employer** means (i) Kindred Healthcare, Inc. (formerly Vencor, Inc.) and (ii) any entity that becomes part of the company after January 1, 1997...

43. According to the *Amended and Restated By-laws of Kindred Healthcare, Inc.*, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

44. According to its Form 10Ks filed 2002, 2003, and 2004, “Substantially all of our nursing centers are certified to provide services under the Medicare and Medicaid programs. Our nursing centers have been certified because of the quality of our accommodations, equipment, services, safety, personnel, physical environment and policies and procedures meet or exceed the standards of certification set by those programs.. (Form 10-K 2002, Form 10-K 2003, Form 10-K 2004)

45. In its Form 10K for the fiscal year ending December 31, 2002, Kindred Healthcare, Inc., stated that they “have implemented several initiatives to improve our quality and thereby enhance our profitability.”

46. In its Form 10K for the fiscal year ending December 31, 2002, Kindred Healthcare, Inc. stated “we conduct our nursing center marketing efforts, which focus on the quality of care provided at our facilities, at the local market level through our nursing center administrators, admission coordinators and/or facility based sales and marketing personnel. The marketing efforts of our nursing center personnel are supplemented by strategies provided by our regional and district marketing staffs. In order to increase awareness of our services and the provision of quality care, we direct a targeted marketing effort at the elderly population, which we believe is the fastest growing segment in the United States”.

47. The health services division provides training programs for nursing center administrators, managers, nurses and nursing assistants. These programs are designed to maintain high levels of quality patient care. (Form 10-K 2003, Form 10-K 2002)

48. The “Board” must ensure that the Company has a system in place to respond to federal, state, internal and external reports of quality of care issues and that such system functions adequately. (Form 10-K 2002)

49. The “Board” must ensure that the Company adopts and implements policies and procedures that are designed to ensure that each individual cared for in the Company’s facilities receives the level of care required by law. (Form 10-K 2002)

50. The basic responsibility of the directors is to exercise their business judgment to act in what they reasonably believe to be in the best interests of the Company and its shareholders. (Form 10-K 2002)

51. On April 20, 2001 Kindred Healthcare, Inc. entered into a Corporate Integrity agreement with the Office of the Inspector General. Failure to comply with the terms of the agreement could subject the company to severe sanctions.

52. The Kindred Healthcare Code of Conduct describes Kindred's values, standards and expectations that apply to all parts of our operations.

- Quality- Kindred Healthcare is committed to making quality healthcare the primary consideration in everything we do. Quality is the cornerstone of all activities and should be the driving force behind all decisions and actions.
- Financial practices- Kindred is committed to being truthful and accurate in all records, reporting and billing activities.
- Kindred has high expectations and standards. Each employee must review and observe the Kindred Code of Conduct to ensure that conduct and actions are consistent with Kindred's commitment to excellence.

53. As of December 31, 2004, Kindred Healthcare, Inc. operated the third largest network of nursing centers in the United States based on their fiscal 2004 revenues of approximately \$1.8 billion.

54. As of December 31, 2004, Kindred Healthcare, Inc. claimed to operate 249 nursing centers (31,973 licensed beds) in 29 states.

55. In its Form 10K for the fiscal year ending December 31, 2002, Kindred Healthcare, Inc. stated that it operated 285 nursing centers in 32 states with 37,376 licensed beds.

56. As of December 31, 2004 Kindred claimed to have approximately 38,000 full-time and 12,700 part-time and per diem employees.

57. As of December 31, 2003, Kindred Healthcare, Inc. had approximately 38,300 full time, and 12,600 part time and per diem employees.

58. As of December 31, 2002, Kindred claimed to have approximately 40,600 full-time and 12,800 part-time and per diem employees.

59. As of December 31, 2004, Kindred Healthcare, Inc. claimed to operate 2,500 licensed beds in Tennessee at 16 facilities.

60. As of December 31, 2003, Kindred Healthcare, Inc. claimed to operate 2,500 licensed beds in Tennessee at 16 facilities.

61. As of December 31, 2002, Kindred Healthcare, Inc. claimed to operate 2,669 licensed beds in Tennessee at 16 facilities.

CAUSES OF ACTION AGAINST ST. PETER VILLA

NEGLIGENCE

62. The Plaintiff re-alleges and incorporates the allegations in paragraphs 1-61 as if fully set forth herein.

63. St. Peter Villa owed a duty to its residents, including Martha Hart, to provide care, treatment, and services within accepted standards of care of nursing homes.

64. St. Peter Villa owed a duty to their residents, including Martha Hart, to hire, train, and supervise employees to deliver care and services to residents in a safe and beneficial manner.

65. St. Peter Villa breached the duty owed to its residents, including Martha Hart, and were negligent in their care and treatment of Martha Hart, through their acts or omissions, which include, but are not limited to, the following:

- a) The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (hereinafter "nursing personnel") to meet the total needs of Martha Hart;
- b) The failure to increase the number of personnel at St. Peter to ensure that Martha Hart:
 1. received prescribed treatment, medication, and diet;
 2. received necessary supervision, and

3. received timely nursing and medical intervention due to a significant change in condition;
- c) The failure to provide nursing personnel sufficient in number to provide proper treatment and assessment to Martha Hart to protect her skin integrity and to prevent the formation of pressure sores on her body;
 - d) The failure to provide nursing personnel sufficient in number to ensure that Martha Hart attained and maintained her highest level of physical, mental and psychosocial well being;
 - e) The failure to adopt adequate guidelines, policies, and procedures for documenting, maintaining files, investigating, and responding to any complaint regarding the quantity of patient or resident care, the quality of patient or resident care, or misconduct by St. Peter Villa's employees, irrespective of whether such complaint derived from a state or federal survey agency, patient or said facilities, an employee of said facilities or any interested person;
 - f) The failure by the members of the governing body of the facility to discharge their legal and lawful obligation by:
 1. ensuring that the rules and regulations designed to protect the health and safety of the residents such as Martha Hart, as promulgated by the Tennessee Legislature and corresponding regulations implemented expressly pursuant thereto by the Tennessee Department of Health and its agents, including the Division of Health Care Facilities, were consistently complied with on an ongoing basis;
 2. ensuring that the resident care policies for the subject facility were consistently in compliance on an ongoing basis; and
 3. responsibly ensuring that appropriate corrective measures were implemented to correct problems concerning inadequate resident care.
 - g) The failure to maintain medical records on Martha Hart in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:
 1. the diagnosis of Martha Hart;
 2. the treatment of Martha Hart; and

3. the assessment and establishment of appropriate care plans of care and treatment for Martha Hart;
- h) Failure to provide basic and necessary care and supervision during her residency;
- i) Failure to provide basic and necessary nutrition to prevent weight loss;
- j) Failure to provide basic and necessary hydration to prevent dehydration;
- k) The failure to provide Martha Hart with adequate and appropriate assessment to prevent and recognize the symptoms of urinary tract infections;
- j) Failure to timely turn and reposition Ms. Hart to prevent the onset and progression of pressure sores during her residency;
- m) Failure to provide and ensure that Martha Hart received adequate hygiene and sanitary care;
- n) Failure to protect her from abuse and neglect during her residency;
- o) Failure to treat her with kindness and respect;
- p) Failure of high managerial agents and corporate officers to adequately hire, train, supervise, and retain the administrator, director of nurses, and other staff so as to assure that Martha Hart received care in accordance with St. Peter Villa's policies and procedures; and
- q) Making false, misleading, and deceptive representations as to the quality of care, treatment, and services provided by St. Peter Villa to their residents, including Martha Hart.

66. The injuries described in this Complaint are a direct and proximate result of the acts or omissions set forth above, singularly or in combination.

67. At all times during Martha Hart's residency at St. Peter Villa, she was a "resident" pursuant to *Tenn. Code Ann.* §§ 68-11-901 *et seq.*, the Tennessee Nursing Home Residents Rights Act (TNHRRRA), and the corresponding regulations implemented expressly pursuant thereto by the Tennessee Department of Health and its agent, including the Division of Health Care Facilities, namely the Nursing Home Rules and Regulations § 1200-8-6, *et seq.* The particular violations by

St. Peter Villa include, but are not limited to, violations of *Tenn. Code Ann.* § 68-11-901 (1), (8), (10), (15), (16), (21), and (24). Accordingly, Martha Hart is a member of the class that TNHRRA is intended to protect.

68. Ms. Hart was injured as described herein as a direct result of the acts or omissions of St. Peter Villa as set forth above, which constitute a violation of TNHRRA and are evidence of neglect. The injuries suffered by Ms. Hart were of the type that TNHRRA is designed to prevent.

69. WHEREFORE, Plaintiff seeks compensatory and punitive damages against St. Peter Villa in an amount to be determined by the jury, plus costs and any other relief to which Plaintiff is entitled by law.

**GROSS NEGLIGENCE, WILFUL, WANTON,
RECKLESS, MALICIOUS AND/OR INTENTIONAL CONDUCT**

70. The Plaintiff re-alleges and incorporates the allegations in paragraphs 1-69 as if fully set forth herein.

71. The longevity, scope and severity of St. Peter Villa's failures and actions and their consciously indifferent actions with regard to the welfare and safety of helpless residents, such as Martha Hart, constitute gross negligence, willful, wanton, reckless, malicious and/or intentional misconduct as such terms are understood in law.

72. Such conduct was undertaken by St. Peter Villa without regard to the health and safety consequences to those residents, such as Martha Hart, entrusted to its care. Moreover, such conduct evidences such little regard for its duties of care, good faith, and fidelity owed to Martha Hart as to raise a reasonable belief that the acts and omissions set forth above are the result of conscious indifference to Martha Hart's rights and welfare.

73. WHEREFORE, Plaintiff seeks compensatory and punitive damages in an amount to be determined by the jury, plus costs and any other relief to which Plaintiff is entitled by law.

**NEGLIGENCE PURSUANT TO THE TENNESSEE
MEDICAL MALPRACTICE ACT, TENN. CODE ANN. §§ 29-26-115 ET SEQ.**

74. Plaintiff hereby re-alleges and incorporates the allegations in paragraphs 1-73 as if fully set forth herein.

75. St. Peter Villa owed a duty to residents, including Martha Hart, to hire, train, and supervise employees so that such employees delivered care and services to residents in a safe and beneficial manner.

76. St. Peter Villa owed a duty to residents, including Martha Hart, to ensure St. Peter Villa rendered care and services as a reasonably prudent and similarly situated nursing home would render, including but not limited to rendering care and services in a safe and beneficial manner.

77. St. Peter Villa owed a duty to assist all residents, including Martha Hart, in attaining and maintaining the highest level of physical, mental, and psychosocial well-being.

78. St. Peter Villa failed to meet the standard of care and violated its duty of care to Martha Hart through mistreatment, abuse and neglect. The medical negligence of Defendants includes, but is not limited to, the following acts and omissions:

- a) The failure to provide and ensure adequate nursing care plans, including necessary revisions, based on the needs of Martha Hart;
- b) The failure to implement and ensure that an adequate nursing care plan for Martha Hart was followed by nursing personnel;
- c) The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;
- d) The failure to provide care, treatment, and medication to Martha Hart in accordance with physician's orders;
- e) The failure to provide proper treatment and assessment to Martha Hart in order to prevent falls;

- f) The failure to properly assess Martha Hart for the risk of development of ulcers on her body;
- g) The failure to provide Martha Hart with adequate and appropriate nursing care, treatments and medication for pressure ulcers after the development of pressure ulcers on Martha Hart;
- h) The failure to provide Martha Hart with adequate and appropriate assessment for proper nutrition;
- i) The failure to properly and timely notify Martha Hart's attending physician of significant changes in her physical condition;
- j) The failure to adequately and appropriately monitor Martha Hart and recognize significant changes in her health status;
- k) The failure to provide treatment for persistent, unresolved problems relating to the care and physical condition of Martha Hart, resulting in her unnecessary pain, agony and suffering;
- l) The failure to provide a safe environment for Martha Hart;
- m) The failure to ensure that Martha Hart received adequate assessment of her nutritional needs;
- n) The failure to properly notify the family of Martha Hart of significant changes in her health status.

79. A reasonably prudent nursing home, operating under the same or similar conditions, would not have failed to provide the care listed in the above complaint. Each of the foregoing acts of negligence on the part of St. Peter Villa was a proximate cause of Martha Hart's injuries. Martha Hart's injuries were all foreseeable to St. Peter Villa.

80. St. Peter Villa's conduct in breaching the duties owed to Martha Hart was negligent, grossly negligent, willful, wanton, malicious, reckless and/or intentional.

81. As a direct and proximate result of such negligent, grossly negligent, willful, wanton, reckless, malicious, and/or intentional conduct, Plaintiff asserts a claim for judgment for all compensatory and punitive damages against St. Peter Villa including, but not limited to,

medical expenses, pain and suffering, mental anguish, disability and humiliation in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

VIOLATIONS OF
TENNESSEE ADULT PROTECTION ACT

82. The Plaintiff re-alleges and incorporates the allegations in paragraphs 1-81 as if fully set forth herein.

83. At all times during Martha Hart's admission at St. Peter Villa, Martha Hart was an "elderly person" and/or "disabled person" as defined by the Tennessee Adult Protection Act, *Tenn. Code Ann. § 71-6-101 et seq.* (TAPA). The acts or omissions of St. Peter Villa as set forth above occurred in a facility or were committed by staff of a facility licensed or required to be licensed under *Tenn. Code Ann.* 68 or 33.

84. Accordingly, Martha Hart was a member of the class that TAPA is intended to protect.

85. The acts or omissions of St. Peter Villa as set forth above constitute "abuse or neglect" as defined by TAPA. Accordingly, the injuries suffered by Martha Hart are of the type that TAPA was designed to prevent.

86. As a direct and proximate result of the aforementioned, non-medical acts and omissions of St. Peter Villa, Martha Hart suffered mental anguish, physical suffering and physical injuries including, but not limited to, those described herein. As a further direct and proximate result of St. Peter Villa conduct, Martha Hart required medical attention, thereby incurring medical expenses. St. Peter Villa's violation of TAPA was a proximate cause of Martha Hart's injuries.

87. The acts of St. Peter Villa constituting "abuse or neglect" as defined by TAPA, and causing damages to Martha Hart, as heretofore described, entitle Plaintiff to recover against St. Peter Villa both compensatory and punitive damages in an amount to be determined by the jury,

attorneys fees pursuant to TAPA, plus costs and any other relief to which Plaintiff is entitled by law.

**BREACH OF CONTRACTUAL DUTIES OWED TO
MARTHA HART AS A THIRD PARTY BENEFICIARY OF ST. PETER
VILLA'S PROVIDER AGREEMENTS WITH STATE AND FEDERAL GOVERNMENT**

88. Plaintiff re-alleges and incorporates the allegations in paragraphs 1-87 as if fully set forth herein.

89. Upon becoming a resident of St. Peter Villa, Martha Hart entered into an express or implied contract with St. Peter Villa and St. Peter Villa contract(s) with the State of Tennessee and the federal government, whereby for consideration duly paid by her, or on her behalf, St. Peter Villa was to provide her a place of residence and to provide her nutrition, personal care, and nursing care. By terms of such contract(s), or provider agreement(s), St. Peter Villa expressly or impliedly agreed or warranted to use reasonable care and diligence in providing nursing care to Martha Hart, and to exercise reasonable care in maintaining the personal safety and general health and welfare of Martha Hart. Pursuant to such contract(s), Martha Hart was entrusted to St. Peter Villa's sole custody and care. Plaintiff is not presently in possession of a copy of the provider agreement(s).

90. As a proximate consequence of the aforementioned acts, omissions, failures, and sub-standard care, St. Peter Villa breached the terms of the foregoing warranty and/or contracts, and Martha Hart was caused to suffer extreme pain and suffering, unnecessary medical treatments, pressure sores, malnutrition, dehydration, humiliation, weight loss, and numerous infections.

91. Plaintiff seeks compensatory in an amount to be determined by the jury, plus costs and any other relief to which Plaintiff is entitled by law.

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CAUSES OF ACTION AGAINST KINDRED DEFENDANTS

NEGLIGENCE

92. The Plaintiff re-alleges and incorporates the allegations in paragraphs 1-91 as if fully set forth herein.

93. Kindred Defendants owed a duty to their residents, including Martha Hart, to provide care, treatment, and services within accepted standards of care of nursing homes.

94. Kindred Defendants breached the duty owed to their residents, including Martha Hart, and was negligent in their care and treatment of Martha Hart, through their acts or omissions, which include, but are not limited to, the following:

- a) The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (hereinafter “nursing personnel”) to meet the total needs of Martha Hart;
- b) The failure to increase the number of personnel at Primacy to ensure that Martha Hart:
 - 1. received prescribed treatment, medication, and diet;
 - 2. received necessary supervision, and
 - 3. received timely nursing and medical intervention due to a significant change in condition;
- c) The failure to provide nursing personnel sufficient in number to provide proper treatment and assessment to Martha Hart to protect her skin integrity and to prevent the formation of pressure sores on her body;
- d) The failure to provide nursing personnel sufficient in number to ensure that Martha Hart attained and maintained her highest level of physical, mental and psychosocial well being;
- e) The failure to adopt adequate guidelines, policies, and procedures for documenting, maintaining files, investigating, and responding to any complaint regarding the quantity of patient or resident care, the quality of patient or resident care, or misconduct by Kindred Defendants’ employees, irrespective of whether such complaint derived from a state or federal

survey agency, patient or said facilities, an employee of said facilities or any interested person;

- f) The failure by the members of the governing body of the facility to discharge their legal and lawful obligation by:
 - 1. ensuring that the rules and regulations designed to protect the health and safety of the residents such as Martha Hart, as promulgated by the Tennessee Legislature and corresponding regulations implemented expressly pursuant thereto by the Tennessee Department of Health and its agents, including the Division of Health Care Facilities, were consistently complied with on an ongoing basis;
 - 2. ensuring that the resident care policies for the subject facility were consistently in compliance on an ongoing basis; and
 - 3. responsibly ensuring that appropriate corrective measures were implemented to correct problems concerning inadequate resident care.
- g) The failure to maintain medical records on Martha Hart in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:
 - 2. the diagnosis of Martha Hart;
 - 2. the treatment of Martha Hart; and
 - 3. the assessment and establishment of appropriate care plans of care and treatment for Martha Hart;
- h) Failure to provide basic and necessary care and supervision during her residency;
- i) Failure to provide basic and necessary nutrition to prevent malnutrition and weight loss;
- j) Failure to provide basic and necessary hydration to prevent dehydration;
- k) The failure to provide Martha Hart with adequate and appropriate assessment to prevent and recognize the symptoms of urinary tract infections;
- l) The failure to provide proper supervision and assistive devices needed to prevent falls/drops.

- m) Failure to timely turn and reposition Ms. Hart to prevent the onset and progression of pressure sores during her residency;
- n) Failure to provide and ensure that Martha Hart received adequate hygiene and sanitary care;
- o) Failure to protect her from abuse and neglect during her residency;
- p) Failure to treat her with kindness and respect;
- q) Failure to timely diagnosis symptoms of stroke;
- r) Failure of high managerial agents and corporate officers to adequately hire, train, supervise, and retain the administrator, director of nurses, and other staff so as to assure that Martha Hart received care in accordance with St. Peter Defendants' policies and procedures; and
- s) Making false, misleading, and deceptive representations as to the quality of care, treatment, and services provided by Kindred Defendants to their residents, including Martha Hart.

95. The injuries described in this Complaint are a direct and proximate result of the acts or omissions set forth above, singularly or in combination.

96. At all times during Martha Hart's residency at Primacy, she was a "resident" pursuant to *Tenn. Code Ann. §§ 68-11-901 et seq.*, the Tennessee Nursing Home Residents Rights Act (TNHRRA), and the corresponding regulations implemented expressly pursuant thereto by the Tennessee Department of Health and its agent, including the Division of Health Care Facilities, namely the Nursing Home Rules and Regulations § 1200-8-6, *et seq.* The particular violations by Kindred Defendants include, but are not limited to, violations often. *Tenn. Code Ann. § 68-11-901* (15), (16), (21), and (24). Accordingly, Martha Hart is a member of the class that TNHRRA is intended to protect.

97. Ms. Hart was injured as described herein as a direct result of the acts or omissions of Kindred Defendants as set forth above, which constitute a violation of TNHRRA and are

evidence of neglect. The injuries suffered by Ms. Hart were of the type that TNHRRA is designed to prevent.

98. WHEREFORE, Plaintiff seeks compensatory and punitive damages against Kindred Defendants in an amount to be determined by the jury, plus costs and any other relief to which Plaintiff is entitled by law.

**GROSS NEGLIGENCE, WILFUL, WANTON,
RECKLESS, MALICIOUS AND/OR INTENTIONAL CONDUCT**

99. The Plaintiff re-alleges and incorporates the allegations in paragraphs 1-98 as if fully set forth herein.

100. The longevity, scope and severity of Kindred Defendants' failures and actions and their consciously indifferent actions with regard to the welfare and safety of helpless residents, such as Martha Hart, constitute gross negligence, willful, wanton, reckless, malicious and/or intentional misconduct as such terms are understood in law.

101. Such conduct was undertaken by Kindred Defendants without regard to the health and safety consequences to those residents, such as Martha Hart, entrusted to their care. Moreover, such conduct evidences such little regard for its duties of care, good faith, and fidelity owed to Martha Hart as to raise a reasonable belief that the acts and omissions set forth above are the result of conscious indifference to Martha Hart's rights and welfare.

102. WHEREFORE, Plaintiff seeks compensatory and punitive damages in an amount to be determined by the jury, plus costs and any other relief to which Plaintiff is entitled by law.

**NEGLIGENCE PURSUANT TO THE TENNESSEE
MEDICAL MALPRACTICE ACT, TENN. CODE ANN. §§ 29-26-115 ET SEQ.**

103. Plaintiff hereby re-alleges and incorporates the allegations in paragraphs 1-102 as if fully set forth herein.

104. Kindred Defendants owed a duty to residents, including Martha Hart, to hire, train, and supervise employees so that such employees delivered care and services to residents in a safe and beneficial manner.

105. Kindred Defendants owed a duty to residents, including Martha Hart, to ensure Primacy rendered care and services as a reasonably prudent and similarly situated nursing home would render, including but not limited to rendering care and services in a safe and beneficial manner.

106. Kindred Defendants owed a duty to assist all residents, including Martha Hart, in attaining and maintaining the highest level of physical, mental, and psychosocial well-being.

107. Kindred Defendants failed to meet the standard of care and violated their duty of care to Martha Hart through mistreatment, abuse and neglect. The medical negligence of Defendants includes, but is not limited to, the following acts and omissions:

- a) The failure to provide and ensure adequate nursing care plans, including necessary revisions, based on the needs of Martha Hart;
- b) The failure to implement and ensure that an adequate nursing care plan for Martha Hart was followed by nursing personnel;
- c) The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;
- d) The failure to provide care, treatment, and medication to Martha Hart in accordance with physician's orders;
- e) The failure to provide proper treatment and assessment to Martha Hart in order to prevent falls;
- f) The failure to properly assess Martha Hart for the risk of development of ulcers on her body;
- g) The failure to provide Martha Hart with adequate and appropriate nursing care, treatments and medication for pressure ulcers after the development of pressure ulcers on Martha Hart;

- h) The failure to provide Martha Hart with adequate and appropriate assessment for proper nutrition;
- i) The failure to properly and timely notify Martha Hart's attending physician of significant changes in her physical condition;
- j) The failure to adequately and appropriately monitor Martha Hart and recognize significant changes in her health status;
- k) The failure to provide treatment for persistent, unresolved problems relating to the care and physical condition of Martha Hart, resulting in her unnecessary pain, agony and suffering;
- l) The failure to provide a safe environment for Martha Hart;
- m) The failure to ensure that Martha Hart received adequate assessment of her nutritional needs, which resulted in injuries including, but not limited to, weight loss, impaired skin integrity, and the placement of a PEG tube; and
- n) The failure to properly notify the family of Martha Hart of significant changes in her health status.

108. A reasonably prudent nursing home, operating under the same or similar conditions, would not have failed to provide the care listed in the above complaint. Each of the foregoing acts of negligence on the part of Kindred Defendants was a proximate cause of Martha Hart's injuries. Martha Hart's injuries were all foreseeable to Kindred Defendants.

109. Kindred Defendants' conduct in breaching the duties owed to Martha Hart was negligent, grossly negligent, willful, wanton, malicious, reckless and/or intentional.

110. As a direct and proximate result of such negligent, grossly negligent, willful, wanton, reckless, malicious, and/or intentional conduct, Plaintiff asserts a claim for judgment for all compensatory and punitive damages against Kindred Defendants including, but not limited to, medical expenses, pain and suffering, mental anguish, disability and humiliation in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

VIOLATIONS OF
TENNESSEE ADULT PROTECTION ACT

111. The Plaintiff re-alleges and incorporates the allegations in paragraphs 1-110 as if fully set forth herein.

112. At all times during Martha Hart's admission at Primacy, Martha Hart was an "elderly person" and/or "disabled person" as defined by the Tennessee Adult Protection Act, *Tenn. Code Ann. § 71-6-101 et seq.* (TAPA). The acts or omissions of Kindred Defendants as set forth above occurred in a facility or were committed by staff of a facility licensed or required to be licensed under *Tenn. Code Ann.* 68 or 33.

113. Accordingly, Martha Hart was a member of the class that TAPA is intended to protect.

114. The acts or omissions of Kindred Defendants as set forth above constitute "abuse or neglect" as defined by TAPA. Accordingly, the injuries suffered by Martha Hart are of the type that TAPA was designed to prevent.

115. As a direct and proximate result of the aforementioned, non-medical acts and omissions of Kindred Defendants, Martha Hart suffered mental anguish, physical suffering and physical injuries including, but not limited to, those described herein. As a further direct and proximate result of Kindred Defendants' conduct, Martha Hart required medical attention, thereby incurring medical expenses. Kindred Defendants' violation of TAPA was a proximate cause of Martha Hart injuries.

116. The acts of Kindred Defendants constituting "abuse or neglect" as defined by TAPA, and causing damages to Martha Hart, as heretofore described, entitle Plaintiff to recover against Kindred Defendants both compensatory and punitive damages in an amount to be

determined by the jury, attorneys fees pursuant to TAPA, plus costs and any other relief to which Plaintiff is entitled by law.

**BREACH OF CONTRACTUAL DUTIES OWED TO
MARTHA HART AS A THIRD-PARTY-BENEFICIARY OF KINDRED DEFENDANTS'
CORPORATE INTEGRITY AGREEMENT AND THE PROVIDER AGREEMENTS
WITH STATE AND FEDERAL GOVERNMENT**

117. Plaintiff re-alleges and incorporates the allegations in paragraphs 1-116 as if fully set forth herein.

118. At all times relevant hereto, a valid contract, created upon sufficient consideration, existed between Kindred Nursing Centers Limited Partnership d/b/a Primacy Rehabilitation and Nursing Center and the Office of Inspector General of the United States Department of Health and Human Services. (A copy of this contract is attached hereto as Exhibit A.)

119. An intent of the contract was to operate for the benefit of the residents of Primacy.

120. As a resident of Primacy, Martha Hart was a third party beneficiary of the contract between Kindred Defendants and the Office of Inspector General of the United States Department of Health and Human Services.

121. By terms of such contract, Kindred Healthcare Inc. expressly agreed or warranted to comply with all Federal statutes, regulations, and guidelines applicable to Primacy as well as its own policies and procedures, for the welfare and protection of nursing home residents.

122. As described above by the aforementioned acts, omissions, failures, and substandard care, Kindred Defendants breached the terms of the foregoing warranty and/or contract and, as a result, Martha Hart was caused to suffer extreme pain and suffering, including, the injuries described in paragraphs 21 and 22, unnecessary physical pain and mental suffering.

123. Upon becoming a resident of Primacy, Martha Hart entered into an express or implied contract with Kindred Defendants and Kindred Defendants contract(s) with the State of

Tennessee and the federal government, whereby for consideration duly paid by her, or on her behalf, Kindred Defendants were to provide her a place of residence and to provide her nutrition, personal care, and nursing care. By terms of such contract(s), or provider agreement(s), Kindred Defendants expressly or impliedly agreed or warranted to use reasonable care and diligence in providing nursing care to Martha Hart, and to exercise reasonable care in maintaining the personal safety and general health and welfare of Martha Hart. Pursuant to such contract(s), Martha Hart was entrusted to Kindred Defendants' sole custody and care. Plaintiff is not presently in possession of a copy of provider agreement(s).

124. As a proximate consequence of the aforementioned acts, omissions, failures, and sub-standard care, Kindred Defendants breached the terms of the foregoing warranty and/or contract, and Martha Hart was caused to suffer extreme pain and suffering, unnecessary medical treatments, pressure sores, sepsis, malnutrition, dehydration, humiliation, and severe weight loss.

125. Plaintiff seeks compensatory in an amount to be determined by the jury, plus costs and any other relief to which Plaintiff is entitled by law.

DAMAGES

126. Plaintiff re-alleges and incorporates the allegations in Paragraphs 1-125 as if fully set forth herein.

127. As a direct and proximate result of the negligence of Defendants as set out above, Martha Hart suffered injuries including, but not limited to, those described herein. As a result, Martha Hart incurred significant medical expenses, and suffered embarrassment and physical impairment.

128. Plaintiff seeks punitive and compensatory damages against Defendants in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

REQUEST FOR TRIAL BY JURY

129. Plaintiff demands a trial by jury on all issues herein set forth.

PRAYER FOR RELIEF

Pursuant to Tennessee Rules of Civil Procedure, Plaintiff demands that all issues of fact in this case be tried by a jury.

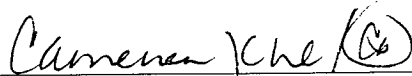
WHEREFORE, the Plaintiff prays for judgment against Defendants, as follows:

1. For damages to be determined by the jury, in an amount exceeding the minimum jurisdictional amount of the Court, and adequate to compensate Plaintiff for all the injuries and damage sustained;
2. For all general and special damages caused by the alleged conduct of Defendants;
3. For the costs of litigating this case;
4. For punitive damages sufficient to punish Defendants for their egregious conduct and to deter Defendants and others from repeating such atrocities; and
5. For all other relief to which Plaintiff is entitled by Tennessee law.

Respectfully submitted,

WILKES & McHUGH, P.A.

By:


Cameron C. Jehl (BPR#18729)
425 West Capitol Avenue, Suite 3500
Little Rock, Arkansas 72201
(501) 371-9903
(501) 371-9905 Facsimile

Attorney for Plaintiff